

**NC COMMISSION FOR MENTAL HEALTH,  
DEVELOPMENTAL DISABILITIES AND  
SUBSTANCE ABUSE SERVICES**

Clarion Hotel  
320 Hillsborough Street  
Raleigh, NC

August 16, 2007

**Attending**

**Commission Members:** Pender McElroy, Lois T. Batton, Dr. Richard Brunstetter, Laura C. Coker, Clayton Cone, Dorothy Rose Crawford, Pearl Finch, Mazie Fleetwood, Ellen Holliman, Judy L. Lewis, Martha Macon, Floyd McCullouch, Connie Mele, Emily Moore, Jerry Ratley, Carl Shantzis, Ed.D.

**Commission Members Excused:** Dr. Marvin Swartz, Dr. William Sims, George Jones, Martha Martinat, Paul Gulley, Anna Marie Scheyett, Ann Forbes

**Ex-Officio Committee Members:** Larry Pittman, Peggy Balak, Bob Hedrick, Robin Huffman, Deby Dihoff

**Others:** Steven Hairston, Leza Wainwright, Denise Baker, Marta T. Hester, Andrea Borden, Stephanie Evans, Susan Kelley, Rebecca Carina, Gene Rodgers, Margaret Brake, Jim Jarrard, Ann Rodriguez, David Swann, Sue Creighton, Frank Perry, Dianne Pomper, Rich Slipsky, Louise Fisher, Paula Cox Fishman, Joan Johnson, Mark Sullivan, John L. Crawford, Tara Larson, Thomas Galligan

**Handouts:**

- State Ethics Commission – Education Credit Certification Form
- Outline of NCGS Chapter 138A and 120C
- DHHS – DMH/DD/SAS Final Budget SFYs 2007-2009
- Special Provisions in Final SFY 2007-2009 Budget (HB 1473)
- 10A NCAC 27I .0400 – Secretary Approval of LME Service Delivery
- 10A NCAC 28C .0201 State Facility Environment
- Reference Material-Dr. Michael Lancaster (The Impact of Smoking)
- 10A NCAC 27G .0507 Area Board Evaluation of an Area Director
- 10A NCAC 28F .0214 LME Utilization of State Hospitals
- Identification & Treatment of Individuals with Mental Illness & Mental Retardation/Developmental Disability in NC Jails
- Carolinas Walk Now for Autism

**Mailed Out Packet:**

- August 16, 2007 Commission Agenda
- Draft May 17, 2007 Commission Meeting Minutes
- Draft July 11, 2007 Rules Committee Minutes
- Draft July 12, 2007 Advisory Committee Minutes
  - Workforce Development Subcommittee Minutes (Ad-Hoc Sub-Committee on Regulatory Matters and Professional and Direct Support Subcommittee)
- August 16, 2007 Commission Meeting Information

- Proposed Adoption of 10A NCAC 27I .0400 – Secretary Approval of LME Service Delivery
- Amendment of 10A NCAC 27G .0813 – Waiver of Licensure Rule
- Proposed Amendment of 10A NCAC 27G .0600 – Area Authority or County Program Monitoring of Facilities and Services
- Proposed Adoption of 10A NCAC 27G .7000 – LME Response to Complaints
- Proposed Adoption of 10A NCAC 27G .7004 – Appeals Regarding Utilization Review Decisions of Non-Medicaid Services
- Proposed Adoption of 10A NCAC 27I .0200 – Local Business Plan
- Proposed Adoption of 10A NCAC 27G .0507 – Area Board Evaluation of an Area Director
- Proposed Adoption of 10A NCAC 27G .7100 – Target Population
- Proposed Adoption of 10A NCAC 28F .0214 – LME Utilization of State Hospitals
- Proposed Adoption of 10A NCAC 27A .0300 – Payments, Reporting and settlement for LME Systems Management
- July 11, 2007 Rules Committee Meeting Handouts (PDF Attachments)
  - NC Providers Council Comments on Proposed Rules
  - Session Law 2006-142, House Bill 2077 (Sections 2.(b) and 4.(m))
  - Items Related to Proposed “*Payment, Reporting and Settlement Rules for LME Systems Management*”: 10A NCAC 27A .0301 - .0304

### **Call to Order**

Chairman Pender McElroy called the meeting to order at 9:30 am. Clayton Cone, Commission member, delivered the Invocation. Chairman McElroy proceeded to welcome everyone and asked the Commission members, Division staff, and other attendees to introduce themselves. He also issued the ethics reminder.

### **Approval of Minutes**

***Upon motion, second, and unanimous vote, the Commission approved the minutes of the May 17, 2007 Commission meeting.***

Chairman McElroy asked that the staff have a copy of the 2008 meeting dates in the packet for the November meeting. Chairman McElroy proposed that the Commission meet on February 21, 2008 instead of February 14<sup>th</sup>.

***Upon motion, second, and unanimous vote, the Commission approved meeting on February 21, 2008 rather than February 14, 2008.***

Chairman McElroy congratulated Dr. Richard Brunstetter for being reappointed to the Commission by the NC Senate and announced that Pamela Poteat is a new Senate appointee to the Commission. Chairman McElroy informed the members that Buren Harrelson was removed from the Commission due to failure to file the Statement of Economic Interest form required by the NC State Ethics Commission.

Chairman McElroy informed the Commission that recent legislation required consideration of a set of rule amendments with regard to smoking in the Division’s state operated facilities, and that the date when the rule would need to become effective required that the proposed amendments be considered by the Commission today and there would not be time for the proposed amendments to be considered by the Rules Committee. He then asked if there was any objection in this case to departing from the standard procedure of having all rules go to the Rules Committee before being presented to the full Commission. There were no objections; and the consensus of the

Commission was to permit Dr. Mike Lancaster to make a presentation to the full Commission following lunch on the rule for smoking in public institutions.

He also announced that Mike Moseley, Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), was on vacation and Leza Wainwright, Deputy Director of DMH/DD/SAS, would be delivering the Division Director's Report.

### **Ethics Training**

Frank Perry, Education Program Director, NC State Ethics Commission, conducted the State Ethics Training for the Commission as required under the NC State Government Ethics Act.

### **Division Director's Report**

Leza Wainwright announced several personnel changes within the NC Department of Health and Human Services including the following: Secretary Odom's departure on August 31<sup>st</sup>, and her replacement, Dempsey Benton, former Raleigh City Manager and former Deputy Secretary in the Department of Environment and Natural Resources; Assistant Secretary Allen Dobson, Assistant Secretary for Health Policy, and Mark Benton, the Director of the NC Division of Medical Assistance, will both be leaving the Department (Mr. Benton will accompany the Secretary and be employed with the Milbank Foundation – no decision has been made regarding his replacement); Mike Hennike, former Chief, State Operated Services, has retired and Dr. James Osberg has been promoted to fill that position; and Dr. Patsy Christian has assumed the responsibility of Director of Dorothea Dix and John Umstead Hospitals until their merger into the new facility (Central Regional Hospital).

Ms. Wainwright highlighted the issues in the budget for MH/DD/SA services for State Fiscal (SFY) Year 2007-09. Ms. Wainwright suggested that Chairman McElroy invite Dr. Lancaster to a future meeting to discuss the Mental Health Coordination for Returning Veterans, which is one of the items in the agency's budget. She also reviewed a list of legislative reports assigned to the Division and other issues required through special provisions recently during the SFY 2007-2009 legislative session.

### **Advisory Committee Report**

Dr. Carl Shantzis, Commission member, presented the Advisory Committee Report from the July 12, 2007 meeting in Dr. Marvin Swartz' absence. Dr. Shantzis informed the Commission members of the status of the Report on the Workforce Development Work Plan Initiative for Direct Service Workers.

### **Rules Committee Report**

Floyd McCullouch, Chairman, Rules Committee, presented the Rules Committee Report for the July 11, 2007 meeting. All rules presented at the July Rules Committee meeting will be presented again at today's Commission meeting for appropriate action.

### **10A NCAC 27I .0400 – Secretary Approval of LME Service Delivery**

Leza Wainwright presented the proposed adoption of the Rule on the Secretary Approval of LME Service Delivery rule. The proposed rule is being initiated as a result of the mandate in House Bill 2077, that DMH/DD/SAS put into rule all of the activities that DMH/DD/SAS had previously implemented as policy guidance. It is also mandated, as part of the reform legislation, that the Secretary approve direct service delivery by Local Management Entities (LMEs) under appropriate circumstances. Since the Secretary has rulemaking authority and the proposed rule is presented for information and comment, no action is required by the Commission.

Ms. Wainwright stated that there was a change in 10A NCAC 27I .0403 as requested by the Rules Committee during the July 11<sup>th</sup> meeting. The change provides for “documentation that the LME Board has approved the LMEs request to deliver services”. There was also another change requiring the LME to submit the name of service(s) for which they are requesting approval, the period of time that they want to deliver those services, the number of existing providers in the catchment area by service they are asking for and the number of clients that those providers can serve. Ms. Wainwright also stated that there were additions made to 10A NCAC 27I .0404 based on input from the NC Council on Community Programs.

**The meeting recessed for lunch at 12:00 noon.**

#### **Community Support – Rate Setting**

Tara Larson, Assistant Director for Medical Policy, NC Division of Medical Assistance (DMA), delivered a presentation on Community Support and advised the Commission that DMA, along with LMEs, is in the process of reviewing files of all consumers who are receiving over 12 hours per month of Community Support Services. The LMEs should have the initial stage of this task completed by the end of September. She added that appropriate action will be taken following this process.

Ms. Larson updated the Commission about the recent rules released by the Centers for Medicare and Medicaid Services (CMS) under the Rehabilitation Option. She asked the Commission to review those rules and consider submitting a written response to CMS in accordance with their process.

Thomas Galligan, Deputy Director for Budget and Finance, NC Division of Medical Assistance, outlined for the Commission the process by which rates are set within DMA. Mr. Galligan stated that DMA works very closely with DMH to achieve the rates and that rates are set through various methods including cost reports, Medicare data, cost modeling, etc. DMA uses the cost modeling method to help with the mental health rates. He also explained that the Rate Review Board is chaired by the DHHS Secretary; board members include the Assistant Secretaries for the Department, the Directors and Deputy Directors for both Divisions, and Director for the Division of Budget and Analysis. The various Divisions within the Department have been charged to bring to the Rate Review Board proposed changes in rates, as well as any proposed change in methodology by which they will establish rates. The Board meets on a monthly basis, which is generally the first Monday of the month.

Mr. Galligan also spoke briefly on the Community Support rate change and process involving DMA, DMH/DD/SAS and a select group of providers. There were a series of meetings with those providers which culminated in the rate being reduced by approximately \$10-\$11 on an hourly basis. The original rate was around \$60 an hour was reduced to approximately \$51 an hour.

Following the discussion on community support – rate setting, Mr. Galligan and Ms. Larson responded to several questions from Commission members:

- Whether there was discussion of tiered rates based on qualifications
  - Mr. Galligan responded that although he was not personally involved in the discussion, he did not think so.
- The number of providers for community support in the state

- Mr. Gallagan stated that there was approximately 1,600 separate provider numbers (sites).
- Whether post reviews will likely result in a payback situation
  - Ms. Larson responded that currently the process was still pending. She further added that based on preliminary information, they are expecting some significant disallowance of payments.

#### **10A NCAC 27G .0813 – Waiver of Licensure of Rule**

Stephanie Alexander, Division of Health Service Regulation (DHSR), formerly the Division of Facility Services (DFS), Mental Health Licensure Section, presented the amendment of the Waiver of Licensure rule for Final Action by the Commission. These are technical changes to reflect the actual appeal process for denial of a request of a waiver. Along with these changes, the change of name for DFS to DHSR was made within the rule.

*Upon motion, second, and unanimous vote, the Commission approved the adoption of the proposed amendment of the Waiver of Licensure rule with no additional changes.*

#### **10A NCAC 28C .0201 - State Facility Environment**

Laura White, Team Leader, DMH/DD/SAS Psychiatric Hospitals, presented the proposed amendment of the State Facility Environment rule. This rule requires each State facility to provide adequate areas that are accessible to patients and residents who wish to smoke tobacco at the Division's State operated facilities. The amendment eliminates this provision. This would not require that State facilities be smoke free, but it would allow them to have the policy to be smoke free. This would include both inside the facility and on the grounds as well. The Commission has rulemaking authority for the proposed amendment.

Comments and questions from Commission members included the following:

- Laura Coker, Commission member, asked where were the person's rights and self-determination with regard to something that is legal.
  - Ms. White's response was that they believed it was their responsibility as people who are providing care and treatment to have an environment that is therapeutic and healthy.
- Emily Moore, Commission member, asked if this rule pertained to employees.
  - Ms. White responded that it did not.
- Judy Lewis, Commission member, stated that she felt that this was a client's right involving the choice to smoke or not smoke (especially outdoors). Ms. Lewis further stated that there is a physical impact associated with nicotine patches and medications for individuals to stop smoking.
- Lois Batton, Commission member, asked if they had done any studies regarding patients who were substance abusers.
  - Ms. White directed that question to Dr. Lancaster and stated that he would be discussing this further in his presentation.

Dr. Michael Lancaster, DMH/DD/SAS, Chief of Clinical Policy, discussed the medical components to support the amendment of this rule. Dr. Lancaster distributed excerpts from a

document that was generated by the National Association of State Mental Health Program Medical Directors on a study conducted over a two year period and released in October 2006. Dr. Lancaster further stated that the studies found that staff generally anticipated more smoking related problems than actually occurred. He also emphasized the issue of treating the addiction. Comments and questions from Commission members in response to Dr. Lancaster's presentation included those listed below:

- Ms. Coker stated that it was not the long-term settings that she had concerns about, but the shorter-term settings. She believes that smoking cessations programs in longer-term settings are wonderful, but does not believe this is going to accomplish the desired outcome in a shorter-term setting.
- Dr. Brunstetter stated that part of his concern was that it was the Commission making the decision for someone else and that it is a legal substance and right that people have when outside of the hospital.
- Mazie Fleetwood stated that she supported the ban because it is important to the overall health and wellness of the people that are being served. Ms. Fleetwood further stated that if it was done as indicated, in a thoughtful process with smoking cessation as needed, in the end it would be beneficial.
- Deby Dihoff, Ex-Officio Committee member, commented that perhaps some time should be taken with this rule. She questioned if the State Consumer and Family Advisory Committee (CFAC) commented on the rule and if the consumers and family members had been given an opportunity to debate it. She also encouraged the Commission to continue to look at the rule and get input from the consumers and family members and go back through the Commission's Rules Committee process.
- Dr. Shantzis asked who would provide the treatment if they are going to go smoke free in these environments, who will be responsible for addressing the smoking issue, how will they do it, and at what cost.
  - Dr. Lancaster stated that it would be in the context of their treatment.
- Jim Osberg, DMH/DD/SAS, Chief, State Operated Services, commented that the driving force for this rule was a very strong desire to improve the health and well being of the patient and resident population. The client's right issue has been recognized, but it is the medical health that they are really trying to address.
- Rich Slipsky, Special Deputy Assistant Attorney General, stated that by this rule the Commission has made smoking a client's right. Mr. Slipsky further stated that the Division is basically asking if it still a right.
- Chairman McElroy clarified for the Commission members that the Commission was being asked to remove the requirement in the rule that provides smoking outside.
- Pearl Finch, Commission member, stated that although for ethical reasons she is for client's rights, when people are in treatment it is recognized that someone needs to look after them because they can no longer take care of themselves. Therefore, Ms. Finch stated that she was in agreement with the amendment.

- Ellen Holliman, Commission member, made a motion that the Commission approve the recommendation, which was seconded by Ms. Fleetwood.
- Dr. Schantzis raised the issue again regarding about receiving input from CFACs or some other identified consumer group before the Commission makes any decision.

*Upon motion, second, and majority vote the Commission adopted the proposed amendment on State Facility Environment rule with a count as follows: 7 in favor, 5 opposed, 2 abstentions – The Chairman did not vote since there was no tie.*

#### **10A NCAC 27G .0600 – Area Authority or County Program Monitoring of Facility and Services**

This series of rule changes are in response to Session Law 2002-164, Senate Bill 163. The Secretary of the Department of Health and Human Services has rulemaking authority for the subject matter of the proposed amendments. Therefore, no action is required by the Commission. The following rules were presented by Jim Jarrard, DMH/DD/SAS, Accountability Team Leader and Shealy Thompson, DMH/DD/SAS, Quality Management Team Leader.

##### **10A NCAC 27G .0601 – Scope**

The amendment is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.

##### **10A NCAC 27G .0602 – Definitions**

The amendment is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.

Since meeting with the Rules Committee on July 11, 2007, the definition of clinical home has been expanded.

##### **10A NCAC 27G .0603 – Incident Response Requirements for Categories A and B Providers**

The changes being put in place are to require providers to have internal policies that specify timelines for responding to incidents and adhering to confidentiality requirements. The other primary change is noted in Paragraph (b) the response to a level III incident. The Division received comments from the NC Provider Council and the NC Council around the timelines for the preliminary finding report and for the final report and that the Division will be reviewing their comments. The final change involves communicating the results of the review to the home and host LMEs and the clinical home provider; this is in order to keep those who are involved in the clients care informed of the situation.

##### **10A NCAC 27G .0604 – Incident Reporting Requirements for Category A and B Providers**

The proposed amendment to Incident Reporting Requirements for Category A and B Providers are to close the communication loop such as reporting incidents when the individual is not in the care of the provider. The other change applying to the rule is clarifying existing policy about what the provider is to report.

**10A NCAC 27G .0605 – Local Management Entity Management of Incidents**

Although no changes were being made, it should be noted that this was the one place they were thinking about using the term “determine” that the necessary action had been taken and “determine” that client records had been secured rather than the word “ensure”. If made, the changes would serve to clarify the LME’s responsibility.

**10A NCAC 27G .0606 – Referral of Complaints to Local Management Entities Pertaining to Category A or Category B Providers**

The proposed amendment of Local Management Entities Pertaining to Category A or Category B Providers is to clarify when a LME refers and when a LME undertakes a monitoring event.

**10A NCAC 27G .0607 – Complaints Pertaining to Category A or Category B Providers Excluding ICF/MR Facilities**

It is proposed that the above rule be repealed and its language included with the package of rules concerning complaints also submitted at this time.

**10A NCAC 27G .0608 – Local Monitoring**

The proposed amendment of Local Monitoring rule is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.

**10A NCAC 27G .0609 – Local Management Entity Reporting Requirements**

When presented at the Rules Committee meeting on July 11<sup>th</sup> there were two changes to this rule. The first one is to require that LMEs share copies of their quarterly reports with their Area Board and with the Consumer Family Advisory Committees (CFACs). The second change is that the monthly monitoring report has been revised to reflect the new provider frequency monitoring tool requirements.

**10A NCAC 27G .0610 – Requirements Concerning the Need for Protective Services**

The proposed amendment for Requirements Concerning the Need for Protective Services is necessary to update the rule to include accurate information and incorporate additions to make monitoring rules consistent with endorsement and other LME requirements vis-à-vis providers of MH/DD/SA services.

**10A NCAC 27G .7000 – LME Response to Complaints**

Stuart Berde, DMH/DD/SAS, Customer Service and Community Rights Team Leader, presented the proposed adoption of LME Response to Complaints rule. The proposed rules are necessary to provide a standardized system clarifying LME responsibilities to address complaints regarding the provision of public services. The rules are proposed for adoption to specify the LME responsibilities to respond to complaints received concerning the provision of public services pertaining to all provider categories in its catchment area. The rule specifies procedure for LMEs to follow when investigating providers according to 10A NCAC 27G .0606. The rule also provides for LME policies and procedures, timeframes and appeal steps. The Secretary of DHHS has rulemaking authority for the subject matter of the proposed adoption. No action was required by the Commission.



A Commission member asked how a complaint against the LME by a provider is handled. Mr. Berde responded that it can be referred to the Division; however, it is not part of this particular rule.

**10A NCAC 27I .0200 – Local Business Plan**

Mark O'Donnell, DMH/DD/SAS, LME Systems Performance Team, presented the proposed adoption of Local Business Plan rule. House Bill 2077 included legislation which requires every Area Authority or County Program, to develop a LME business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. A LME business plan shall provide detailed information regarding how the Area Authority or County Program will meet State standards, laws, and rules for ensuring quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

**10A NCAC 27G .0507 – Area Board Evaluation of an Area Director**

Mark O'Donnell presented the proposed adoption of Area Board Evaluation of an Area Director. General Statute 122C-121(b) requires each Area Board to conduct an annual performance evaluation of the Area Director based on criteria established by the Secretary and the Area Board. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoption is presented for information and comment and no action is required.

**10A NCAC 27G .7100 – Target Populations**

Flo Stein, DMH/DD/SAS, Chief, Community Policy Management, presented the proposed adoption of Target Populations rule. The proposed rule is necessary to define individuals who are given service priority. The Target Population rule is being created to apply to groups of people considered most in need of services available considering resources within the public system. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoption is presented for information and comment and no action is required.

**10A NCAC 28F .0214 – LME Utilization of State Hospitals**

Laura White, DMH/DD/SAS, State Operated Services, State Hospital Team Leader, presented the proposed adoption of LME Utilization of State Hospitals. Adoption of the proposed rule establishes in Administrative Code the Hospital Utilization Plan as first identified in the State Mental Health Plan. The proposed rule is necessary to promote equitable and sustainable utilization of the State operated psychiatric hospitals. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoption is presented for information and comment and no action is required.

**10A NCAC 27A .0300 – Payments, Reporting and Settlement for LME Systems Management**

Phillip Hoffman, Chief, DMH/DD/SAS Resource and Regulatory Management Section, presented the proposed adoption of Payments, Reporting and Settlement for LME Systems Management. The proposed rules are necessary to formally incorporate the process and procedures into these rules from current policy. By settling Local Management Entity Systems Management (LME SM) payments as set forth in these rules, the Division will limit its payments to LMEs based on actual expenditures and actual Medicaid earnings. The Secretary has rulemaking authority for the subject matter of the proposed rules. The proposed adoptions are presented for information and comment and no action is required.

**Public Comment**

Louise G. Fisher described the Walk for Hope which raises money for the research of mental illness. Mrs. Fisher invited everyone to come out and participate.

**Adjournment**

There being no further business, the meeting was adjourned at 3:30 p.m.